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इस भाग में भिन्न पृष्ठ संख्या वाली जाती है जिससे कि यह अलग संकलन
के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 18th March, 1987:—

BILL No. X OF 1987

A Bill further to amend the Payment of Gratuity Act, 1972.

Be it enacted by Parliament in the Thirty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Payment of Gratuity (Amendment) Act, 1987.

Short
title and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

39 of 1972. 2. In section 2 of the Payment of Gratuity Act, 1972 (hereinafter referred to as the principal Act),—

Amend-
ment of
section
2.

(i) in clause (e),—

(a) for the words "one thousand and six hundred rupees per mensem", the words "two thousand and five hundred rupees per mensem, or such higher amount as the Central Government may, having regard to the general level of wages, by notification, specify" shall be substituted;

(b) in the *Explanation*,—

(i) for the words “one thousand and six hundred rupees per mensem”, occurring for the first time, the words, brackets and letter “the amount for the time being specified by or under clause (e)” shall be substituted;

(ii) for the words “one thousand and six hundred rupees per mensem”, occurring at the remaining two places, the words “that amount” shall be substituted;

(ii) in clause (h),—

(a) in sub-clause (i), for the words “and the widow”, the words “and the dependent parents of his wife and the widow” shall be substituted,

(b) the proviso shall be omitted.

Amend-
ment of
section
2A.

3. In section 2A of the principal Act,—

(a) in clause (1), the words “imposing a punishment or penalty or” shall be omitted;

(b) in clause (2), the following *Explanation* shall be added at the end, namely:—

“Explanation.—For the purposes of clause (2), the number of days on which an employee has actually worked under an employer shall include the days on which—

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946, or under the Industrial Disputes Act, 1947, or under any other law applicable to the establishment;

(ii) he has been on leave with full wages, earned in the previous year;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.”.

20 of 1946.
14 of 1947.

Amend-
ment of
section 4.

4. In section 4 of the principal Act,—

(a) in sub-section (1), for the second proviso, the following shall be substituted, namely:—

“Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same

for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.”;

(b) in sub-section (2), the following *Explanation* shall be inserted at the end, namely:—

“Explanation.—In the case of a monthly rated employee, the fifteen days’ wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.”;

(c) in sub-section (3), for the words “twenty months’ wages”, the words “fifty thousand rupees” shall be substituted.

5. After section 4 of the principal Act, the following new section shall be inserted, namely:—

Insertion
of new
section 4A.

‘4A. (1) With effect from such date as may be notified by the appropriate Government in this behalf, every employer, other than an employer or an establishment belonging to, or under the control of, the Central Government or a State Government, shall, subject to the provisions of sub-section (2), obtain an insurance in the manner prescribed, for his liability for payment towards the gratuity under this Act, from the Life Insurance Corporation of India established under the Life Insurance Corporation of India Act, 1956 or any other prescribed insurer:

Com-
pulsory
insur-
ance.

Provided that different dates may be appointed for different establishments or class of establishments or for different areas.

(2) The appropriate Government may, subject to such conditions as may be prescribed, exempt every employer who had already established an approved gratuity fund in respect of his employees and who desires to continue such arrangement, and every employer employing five hundred or more persons who establishes an approved gratuity fund in the manner prescribed from the provisions of sub-section (1).

(3) For the purpose of effectively implementing the provisions of this section, every employer shall within such time as may be prescribed get his establishment registered with the controlling authority in the prescribed manner and no employer shall be registered under the provisions of this section unless he has taken an insurance referred to in sub-section (1) or has established an approved gratuity fund referred to in sub section (2).

(4) The appropriate Government may, by notification, make rules to give effect to the provisions of this section and such rules may provide for the composition of the Board of Trustees of the approved gratuity fund and for the recovery by the controlling authority of the amount of the gratuity payable to an employee from the Life Insurance Corporation of India or any other insurer with whom an insurance has been taken under sub-section (1), or as the case may be, the Board of Trustees of the approved gratuity fund.

(5) Where an employer fails to make any payment by way of premium to the insurance referred to in sub-section (1) or by way of contribution to an approved gratuity fund referred to in sub-section (2), he shall be liable to pay the amount of gratuity due under this Act (including interest, if any, for delayed payments) forthwith to the controlling authority.

(6) Whoever contravenes the provisions of sub-section (5) shall be punishable with fine which may extend to ten thousand rupees and in the case of a continuing offence with a further fine which may extend to one thousand rupees for each day during which the offence continues.

Explanation.—In this section “approved gratuity fund” shall have the same meaning as in clause (5) of section 2 of the Income-tax Act, 1961.

43 of 1961.

Amend-
ment of
section 5.

6. In section 5 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) A notification issued under sub-section (1) or sub-section (2) may be issued retrospectively a date not earlier than the date of commencement of this Act, but no such notification shall be issued so as to prejudicially affect the interests of any person.”.

Amend-
ment of
section 7.

7. In section 7 of the principal Act, for sub-section (3), the following sub-sections shall be substituted, namely:—

“(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.”.

Amend-
ment of
section 8.

8. In section 8 of the principal Act,—

(a) for the words “at the rate of nine per cent. per annum”, the words “at such rate as the Central Government may, by notification, specify” shall be substituted;

(b) the following provisos shall be added at the end, namely:—

“Provided that the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate.”

Provided further that the amount of interest payable under this section shall, in no case, exceed the amount of gratuity payable under this Act.”.

9. In section 9 of the principal Act,—

(a) in sub-section (1), for the words “one thousand rupees”, the words “ten thousand rupees” shall be substituted;

(b) in sub-section (2),—

(i) for the words “which may extend to one year, or with fine which may extend to one thousand rupees, or with both”, the following shall be substituted, namely:—

“which shall not be less than three months but which may extend to one year, or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees, or with both”;

(ii) in the proviso, for the words “Three months”, the words “Six months but which may extend to two years” shall be substituted.

Amend-
ment of
Section 9

STATEMENT OF OBJECTS AND REASONS

The Payment of Gratuity Act, 1972, provides for payment of gratuity to persons employed in factories, mines, oil-fields, plantations, ports, railway companies, shops and certain other establishments employing ten or more persons and for matters connected therewith or incidental thereto. The Labour Ministers' Conference held in 1980 and 1982 had recommended *inter alia* that the time limit for payment of gratuity might be prescribed in the Act itself and that there should be a suitable provision for recovery of interest in cases where the payment of gratuity is delayed. The Indian Labour Conference held in November, 1985 had recommended that a provision for compulsory insurance of employers' liability and setting up of Gratuity Fund for payment of gratuity be incorporated in the Act. The Trade Unions have been representing for suitable enhancement in the wage limit for coverage and ceiling for payment of gratuity.

2. Based on the above recommendations and representations, it is proposed to carry out certain amendments in the Act. Some of the more important amendments are:—

(i) The coverage of the Act is being extended to persons drawing wages up to Rs. 2,500 per month and an enabling provision is being made for raising the wage limit for coverage from time to time;

(ii) Provision is being made for depositing the amount of gratuity payable to a minor with the controlling authority who shall invest the money in a bank or a financial institution for the benefit of minor;

(iii) The existing ceiling of 20 months' wages for payment of gratuity is being replaced by a monetary ceiling of Rs. 50,000;

(iv) Provision is being made for compulsory insurance of employer's liability to pay gratuity under the Act or in the alternative for the setting up of a gratuity fund under the provisions of the Act in relation to establishments employing five hundred or more employees;

(v) Provision is also being made for payment of simple interest at a specified rate, if the amount of gratuity is not paid within thirty days from the date it becomes payable;

(vi) Penalties prescribed under the Act are being made more stringent.

The other amendments proposed in the Bill are of a minor and consequential nature.

3. The Bill seeks to give effect to the above-mentioned proposals.

NEW DELHI;

PURNO A. SANGMA.

The 23rd February, 1987.

FINANCIAL MEMORANDUM

New section 4A which clause 5 of the Bill seeks to insert in the principal Act provides for compulsory insurance of employers' liability under the Act or the setting up of gratuity trust fund, for payment of gratuity. This section also provides for compulsory registration of all the establishments coverable under the Act with the controlling authorities appointed by the appropriate Government.

2. All the Assistant Labour Commissioners (Central) under the Central Industrial Relations Machinery are notified as controlling authorities under the Act, for establishments failing in the Central sphere. They have, therefore, to handle the additional work relating to registration of the establishments in the Central sphere, which will result in some increase in work. The machinery will have, therefore, to be suitably augmented and strengthened. At this stage, it is not possible to make an actual estimate of the additional requirement of staff and the expenditure thereon. However, the expenditure of a recurring nature, which will be mainly towards the salaries, etc., of the additional staff is not likely to exceed Rs. 20 lakhs per year and the expenditure of non-recurring nature for providing furniture, office equipment, etc., is not likely to exceed Rs. 5 lakhs.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 4 of the Bill seeks to amend section 4 of the Payment of Gratuity Act, 1972, to empower the Central Government to frame rules for the purpose of prescribing the bank or any other financial institution and the manner in which the gratuity payable to the minor shall be invested for the benefit of the minor till he attains the majority.

Clause 5 of the Bill inserts new section 4A in the payment of Gratuity Act, 1972. This new section empowers the Central Government to make rules for prescribing the insurers other than the Life Insurance Corporation of India and the manner in which the employer shall get the insurance cover, the manner in which the Gratuity Trust Fund shall be established, the conditions subject to which the exemption from taking compulsory insurance shall be granted, the composition of the Board of Trustees of the Gratuity Trust Fund and the time and manner in which the establishments shall be registered with the controlling authority.

3. The matters in respect of which the rules may be made under the aforementioned provisions relate to administrative detail and procedure. The delegation of legislative power is, therefore, of a normal character.

SUDARSHAN AGARWAL,
Secretary-General.